

Thursday, August 18, 2005 4:00:46 PM EDT

Zollinger & Burleson Ltd. (866/311-9964)

AUG 18 2005

Page 4 of 9

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx.
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <i>1276-N</i>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>August 18, 2005</u> Signature <u>Fred H. Zollinger III</u>	Application Number <u>101,038,563</u>	Filed <u>1-3-2002</u>	
Typed or printed name <u>Fred H. Zollinger III</u>	First Named Inventor <u>Ripich</u>	Art Unit <u>3731</u>	Examiner <u>Baxter</u>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.

Registration number 39,438

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Fred H. Zollinger III
Signature

Fred H. Zollinger III
Typed or printed name

330 526 0104

Telephone number

August 18, 2005
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents; P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

AUG 18 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ripich
Serial No.: 10/038,563
Filing Date: January 3, 2002
Examiner: Jessica R. Baxter
Art Unit: 3731
Confirmation No.: 7118

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Via facsimile transmission to 571-273-8300

Pre-Appeal Brief Request for Review

Sir:

Before the filing of an appeal brief, the Applicant respectfully requests the consideration of the following arguments in favor of the patentability of the independent claims rejected in the final office action and advisory action.

The Examiner rejected independent claims 17, 23, and 28 as being anticipated under 35 U.S.C. § 102(b) by US Patent 5,916,228 to Ripich. The Applicant continues to respectfully traverse these rejections submitting a *prima facie* case of anticipation has not been established. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987),

MPEP § 2131. The Applicant submits each of claims 17, 23, and 28 recites a "debris retention recess" in a manner not found, either expressly or inherently, within Ripich '228.

Each of claims 17, 23, and 28 includes a "debris retention recess" in combination with a specific location for the recess. With reference to the specification and drawings of the present application, the exemplary configuration of the debris retention recess is identified by reference numeral 300 of Figs. 24 and 25. Element 300 is a concave depression formed in the front surface of the scraping wall as shown in the section views of Figs. 24 and 25. Page 17 of the current specification defines the structure and function of the exemplary embodiment. None of the devices disclosed in the Ripich '228 reference has a recess defined in the front wall of a scraping wall as set forth in the present claims. Ripich '228 thus does not anticipate the claims under 35 U.S.C. § 120(b).

Claim 17

Claim 17 is currently pending in the following format:

17. A tongue cleaning device that is used for removing debris from a tongue; the device comprising:

a body having a handle and head;

the head having a scraping wall defining a working edge adapted to be moved over the tongue; the scraping wall having a front surface facing in the direction of the handle of the body; and

the head of the body defining a debris retention recess adapted to collect debris as it is removed from the tongue by the working edge; the debris retention recess being a depression defined in the front surface of the scraping wall.

Claim 17 specifically requires the debris retention recess to be a depression defined in the front surface of the scraping wall. In the Final Office

Action, the Examiner cites the space between edges 31 and 41 as meeting the debris recess limitation of claim 17. (The Applicant understands the Examiner is referring to the embodiment shown in Figs. 4-6 of Ripich '228.) The Examiner's rejection is quite different than the language used in claim 17 which requires the depression to be defined in the front surface of the scraping wall. The Applicant submits the "defined in the front surface" language of claim 17 distinguishes the claimed invention from prior art such as that shown in Figs. 4-6 of Ripich '228 wherein the space (between 31 and 41) is adjacent to and bounded by the scraping wall – but not defined "in the front surface of the scraping wall" as required by the claim. In the final phrase of the rejection, the Examiner submits that the space between edges 31 and 41 is a curved depression defined "in the front surface of the scraping wall." The Applicant respectfully traverses this interpretation. The Ripich '228 space between edges 31 and 41 is next to and bounded by the scraping wall – but no portion of the space between edges 31 and 41 is "a depression defined in the front surface of the scraping wall" as recited in the claim. The Ripich '228 scraping walls are both smooth with no depressions retention recess defined in them. The Applicant submits the language of claim 17 defines a structural limitation that is not disclosed or taught by Ripich '228. The Applicant thus respectfully requests the rejection of claim 17 and its dependent claims to be withdrawn.

Claim 23

Claim 23 is currently pending in the following format:

23. A head for a tongue cleaning device that is used for removing debris from a tongue; the head comprising:

a body having a scraping wall having an upper edge and a lower edge; the lower edge defining a working edge adapted to be moved over the tongue; and
the body defining a debris retention recess adapted to collect debris as it is removed from the tongue by the working edge; the debris retention recess

being a depression defined in the scraping wall between the upper and lower edges of the scraping wall.

Claim 23 thus defines the debris retention recess in a manner more specific than claim 17 by also reciting that the depression defined in the wall is between the upper and lower edges of the scraping wall. The Applicant submits the Examiner has not established a *prima facie case* of anticipation for claim 23 because Ripich '228 does not disclose a recess that is a depression defined in the scraping wall as required by the claim. Ripich '228 does not have a scraping wall that defines a depression in the scraping wall itself. The Applicant thus respectfully requests the rejection of claim 23 and its dependent claims to be withdrawn.

Claim 28

Claim 28 is currently pending in the following format:

28. A head for a tongue cleaning device that is used for removing debris from a tongue; the head comprising:

a body having a scraping wall defining a working edge adapted to be moved over the tongue; and

the scraping wall of the body defining a debris retention recess adapted to collect debris as it is removed from the tongue by the working edge; the debris retention recess disposed immediately above the working edge; the debris retention recess being entirely defined by the scraping wall.

Claim 28 requires the debris retention recess to be entirely defined by the scraping wall. The Examiner relies on the space between scraping walls 31 and 41 to meet the debris retention recess limitation. The Applicant submits the space of Ripich '228 disposed between walls 31 and 41 is, by the Examiner's own definition, defined by a pair of walls. The space cited by the Examiner thus

does not meet the limitation requiring the recess of claim 28 to be entirely defined by the scraping wall. The Applicant submits the Examiner has not established a *prima facie* case of anticipation for claim 28. The Applicant thus respectfully requests the rejection of claim 28 and its dependent claims to be withdrawn.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal Notice of Allowance for the claims.

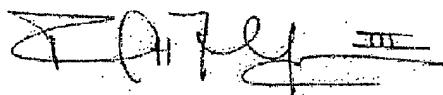
Please call the undersigned attorney if any issues remain after this submission.



Fred H. Zollinger III
Registration No. 39,438
Zollinger & Burleson Ltd.
P.O. Box 2368
North Canton, OH 44720
Phone: 330-526-0104
Fax: 1-866-311-9964

Certificate of Transmission

I hereby certify that this correspondence (Request for reconsideration in application serial no. 10/371,585 filed 02-21-2003) is being transmitted by facsimile to 571-273-8300 on August 18, 2005.



Fred H. Zollinger III, Registration no. 39,438